IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

WEDNESDAY, THE NINETEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA
* * *

WRIT PETITION No. 24979 of 2007

Between:

T. BABA FAKRUDDIN … Petitioner

Versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA,
Represented by its Project Director
Ananthapur district & Ors. … Respondents

Counsel for the Petitioner: Sri K. JAYA KUMAR

Counsel for the Respondents: SRI S.S. VARMA
GOVT.PLEADER FOR REVENUE

THE HON'BLE SRI JUSTICE P.S. NARAYANA
* * *

WRIT PETITION No. 24979 of 2007

O R D E R :

This Court ordered notice before admission on 23-11-2007 and granted interim direction for a period of four weeks in WPMP.No.3253 of 2007.

2. Counter-affidavit was filed by Respondent No.1.

3. Heard Sri K. Jaya Kumar, the counsel representing the writ petitioner and Sri S.S. Varma, the counsel representing the first respondent-National Highways Authority of India.

4. The writ petition is filed for a writ of mandamus, declaring the action of the first respondent in making marks for demolition of the house and to take possession of the lands in H.No.3-459, Somnathnagar, Bypass Road, Ananthapur in Plot No.15-A admeasuring Ac:0-04 ½ Hs. 0-018 out of Ac:5-07 in S.No.212/2 of A.Narayanapuram village in the limits of Narayanapuram Panchayat Area of Ananthapur bounded by East Plot No.17, South: Plot No.15 belonging to B.Narayana, West: National Highways Bye-pass Road, North: Plot No.16 within these boundaries measuring E.W: 60 feet or 18-29 meters, W.S: 33 feet or 10-06 metres without following due process of law, as arbitrary, illegal and violative of Article 300-A of the Constitution of India and further to direct the respondents to refrain

from proceeding further in the above said premises without following due process of law and to pass such other suitable orders as this Court may deems fit and proper in the circumstances of the case.

3. It is stated by the writ petitioner that the writ petitioner while working as a telephone operator in Mahboobnagar had purchased Plot No.15-A admeasuring Ac:0-04 ½ Hs. 0-018 out of Ac:5-07 in S.No.212/2 of Narayanapuram village in the limits of Narayanapuram Panchayat Area of Ananthapur bounded by East:Plot No.17, South: Plot No.15 belonging kto B.Narayana, West: National Highway Bypass road, North Plot No.16 within these boundaries measuring E.W: 60 feet or 18-29 metres, W.S: 33 feet or 10-06 metres vide registered sale deed bearing no.5027 dated 06-12-2007 for a valuable consideration from VL Gurappa and others. It is pertinent to state that the petitioner had purchased the above said property by obtaining a loan from Central Government by mortgaging the above said property in the year 1977 and constructed a house with loan provided by the Central Government. It is stated that the petitioner had paid the entire loan amount to the Central Government and the Central Government had released the above said property from mortgage and executed a release deed on 21-10-2000.

4. Further it is averred that the petitioner is in peaceful

possession and enjoyment of the above said property since 06-12-1977 i.e., from the date of purchase without any hindrance. It is stated that the Gram Panchayat had allotted door no.3-459 by giving permission for construction of the said house in S.No.212/2 of A.Narayanapuram village in the year 1980. The petitioner is also paying house-tax to the A.Narayanapuram village Gram Panchayath regularly. While so, the Engineers of the National Highway-7 belonging to the first respondent had visited the property of the petitioner and marked over the premises two times differently i.e., open place 12 feet x 33 feet and also constructed portion in an extent of 25 feet x 9 feet and also informed that the land belongs to them and the property will be taken over by the department. Immediately the petitioner had made a representation on 19-11-2007 to the second respondent stating that the authorities have not followed the rule of law and the petitioner had not received any notice either under section 4 (1) of the Land Acquisition Act or Section 5-A of the said Act and also no declaration under section 6 is given so far and also to direct the respondents not to dispossess the petitioner without following due process of law.

5. It is also stated that the writ petitioner was told that the respondents may come into the house of the petitioner at any time

and take possession of the same by demolishing the structures in the land. It is stated that the petitioner and his family is living in the above said premises since 1977. It is further stated that the action of the respondents in marking the petitioner's premises for widening of the Highway without following due process of law had been challenged on several grounds specified in paragraph no.4 (A) to (E) of the affidavit filed in support of the writ petition.

6. In the counter-affidavit filed by the first respondent, several of the averments made in the affidavit filed in support of the writ petition had been denied. It is stated that in para no.3 that the Development and Maintenance of National Highway-7 was entrusted to National Highway Authority of India as per National Highways Authority of India Act, 1988. The National Highway Authority of India had taken up widening of existing two lane of NH-7 as part of North-South corridor. Extensive survey work was carried out in Hyderabad-Bangalore section and proposed the alignment based on the site consideration and also considering various technical aspects. The proposed widening of NH-7 in Narayanapuram village, Ananthapur Bye-pass had been planned within the available/acquired land.

7. It is further stated that the National Highway land boundary near the plot of the petitioner had been verified by the Revenue Officials of

Ananthapur Mandal, Ananthapur and the survey reveals that the petitioner had encroached 7.6 meters on the north side and 6.6 meters on the south side of the plot in the National Highway land. An area of 69.58 sq.mts is under encroachment in National Highway land. Land survey sketch prepared by the petitioner is submitted for ready reference. The National Highways Authority of India had only marked the boundaries of National Highway land near the plot of the petitioner and not violated any law. Since the National Highways Authority of India is not acquiring any land in the petitioner's land and confining the proposed widening of NH-7 within the available National Highway land, no notification is required to be given for the acquisition of the petitioner's land. Hence no compensation is admissible. The National Highways Authority of India will follow the process of law for clearing encroachment as per the National Highways (Land & Traffic) Act, 2002 (13 of 2003). In the light of the same, dismissal of the writ petition had been prayed. These are the respective stands taken by the parties.

8. The question to be decided is whether there is an encroachment at all ? If so, what is the extent of encroachment ? These are disputed questions of fact. Even other wise, in the light of the assertions made in the affidavit filed in support of the writ petition

and also in the light of denial made in the counter-affidavit filed by the first respondent, this Court is of the considered opinion that the writ petition can be disposed of directing the respondents not to disturb the possession of the writ petitioner unless and until due process of law is followed in this regard.

9. With the above direction, the writ petition is accordingly disposed of. No costs.

JUSTICE P . S . NARAYANA .

19/12/2007

NB:

Furnish CC of the order
tomorrow.

B/O.ISL